

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOSHUA POIRIER,

Plaintiff,

-against-

KOHL'S DEPARTMENT STORES, INC.

Defendant.

CIVIL ACTION NO. 19-cv-3001

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK:

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § § 1441 and 1446, Defendant Kohl's Department Stores, Inc. (hereinafter "Kohl's") by and through its attorneys, Goldberg Segalla LLP, submits this Notice of Removal from the Supreme Court of New York, Orange County, in which the above-captioned matter is now pending, to the United States District Court for the Southern District of New York. In support of said Notice, Defendant states as follows:

1. This is a personal injury action arising from an alleged trip and fall accident at a Kohl's Distribution Center owned by Kohl's Department Stores, Inc., located in Wurtsboro, New York. *A true and correct copy of Plaintiffs' Amended Summons and Complaint is attached hereto as Exhibit "A".*

2. Plaintiff alleges that Kohl's was careless and negligent and allowed an unsafe condition to exist on its premises consisting of "loose, broken pavement." *See Exhibit "A".*

3. Plaintiff originally commenced this action on December 5, 2018, by filing a civil Complaint in the Supreme Court of New York, Orange County, bearing Index No. EF011877-2018. However, plaintiff incorrectly named “Kohl’s New York, D.C.” as a defendant. *A true and correct copy of Plaintiff’s original Complaint is attached hereto as Exhibit “B”.*

4. Kohl’s New York, D.C. ceased to be in existence as of April 9, 2007. Thus, Kohl’s New York, D.C. was not the correct Defendant entity and the Complaint was never properly served. *A true and correct copy of the Plan of Reorganization of Kohl’s New York, D.C. is annexed hereto as Exhibit “C”.*

5. On March 14, 2019, plaintiff’s counsel mailed a courtesy copy of the original Summons and Complaint naming the incorrect defendant entity to 3440 Route 209, Wurtsboro, New York. *See Exhibit “B”.*

6. On March 15, 2019, the undersigned contacted Plaintiff’s counsel to advise that they named the incorrect defendant. *A true and correct copy of the email communication between the undersigned and plaintiff’s counsel is annexed hereto as Exhibit “D”.*

7. After advising Plaintiff’s counsel of this error, Plaintiff’s counsel filed an Amended Complaint on March 19, 2019 naming the correct defendant entity “Kohl’s Department Stores, Inc.” *See Exhibit “A”.*

8. On March 22, 2019, plaintiff’s counsel emailed a courtesy copy of the Amended Complaint to the undersigned. However, Kohl’s Department Stores, Inc. has not yet formally been served. *A true and correct copy of the email from plaintiff’s counsel to the undersigned is annexed hereto as Exhibit “D”.*

9. Pursuant to 28 U.S.C. § 1446(a) copies of all process, pleadings and orders are attached hereto.

Timeliness of Removal

10. Defendant, Kohl's Department Stores, Inc. first received notice of this action by receipt of a copy of the initial Complaint naming the incorrect Defendant entity on March 14, 2019, and by receipt of the Amended Complaint by its counsel on March 22, 2019.

11. Pursuant to 28 U.S.C. § 1446(b), the original Notice of Removal was filed with this Court within thirty (30) days of Defendant's first receipt "through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based."

12. Since the original Notice of Removal was filed within thirty (30) days of service of the Summons and Complaint, it is timely filed pursuant to 27 U.S.C. § 1446(b).

Amount in Controversy

13. Plaintiff's Amended Complaint fails to set forth any amount in controversy, nor identify the scope and extent of any alleged injuries. On March 28, 2019, the undersigned had a teleconference with plaintiff's counsel where plaintiff's counsel advised, for the first time, that plaintiff underwent two surgical procedures on his ankle, which he contends was a result of the alleged accident, and advised that plaintiff will be seeking in excess of \$75,000. Plaintiff's counsel also advised that there is a Workers Compensation Lien in the amount of approximately \$87,000.

14. Based upon the above, it is respectfully submitted that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

Diversity of Citizenship

15. Plaintiff's Amended Complaint alleges that the above-named Plaintiff is a resident of Orange County, New York. *See Exhibit "A"*.

16. Defendant Kohl's is a corporation organized under the laws of the State of Delaware and has its principal place of business in Wisconsin. *See Exhibit "C"*.

17. Diversity of citizenship existed among the proper parties, Plaintiff and Defendant Kohl's, when the Amended Complaint was filed on or about March 19, 2019. Diversity of citizenship still exists among the proper parties at the time this Notice of Removal is being filed.

Plea for Removal

18. This Honorable United States District Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because this is a civil action in which there is complete diversity of citizenship between Plaintiff and Defendant Kohl's, and in which the amount in controversy exceeds \$75,000, exclusive of interest and costs, as described below.

19. Therefore, this civil action is removable to this Court pursuant to 28 U.S.C. §1441.

20. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being submitted for filing with the Clerk of the Supreme Court of New York, Orange County, and is being served upon Plaintiff.

21. In filing this Notice of Removal, Defendant does not waive any defects in service of process, venue or personal jurisdiction.

22. For the foregoing reasons, this United States District Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a).

WHEREFORE, defendant Kohl's files this Notice of Removal so that the entire State Court Action under Index No. EF011877-2018, now pending in the New York Supreme Court, Orange County, shall be removed to this Court for all further proceedings.

GOLDBERG SEGALLA LLP

By: /s/ Todd R. Harris
Todd R. Harris, Esq.
Attorneys for Defendant
Kohl's Department Stores, Inc.

Dated: April 4, 2019

TO:

Sheila S. Rosenrauch, Esq.
Sobo & Sobo, LLP
One Dolson Avenue
Middletown, New York 10940

Supreme Court of the State of New York
County of Orange
285 Main Street
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